

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.377 OF 2003

The State of Maharashtra

...Appellant

V/s.

Eknath Narayan Katkar

...Respondent

Mr.Y.S.. Shinde APP for Appellant/State.

Mr.U.P. Warunjikar for Respondent.

CORAM : V.M. KANADE, J.

DATED : 8th AUGUST, 2007.

P.C:-

1. Heard learned APP for the Appellant/State and learned counsel for the Respondent.

2. This is an appeal against acquittal filed by the State challenging the order of acquittal passed by the Special Judge, Pune by his Judgment and Order dated 13/11/2002 whereby the Respondent/Accused was acquitted for the offences punishable U/s.7, 13(1)(d) and 13(2) of the Prevention of Corruption Act.

3. It is case of the prosecution that the Accused Eknath Katkar demanded money from the complainant for the purpose of getting his

work done. Accordingly, complainant, thereafter, lodged his complaint in the office of Anti Corruption Bureau and after completing the pre-trap panchanama, raiding party alongwith investigating officer went to the place where the amount was to be paid and Accused was caught red-handed after having accepted three currency notes of Rs.100 and sanction to prosecute the Accused was obtained and thereafter, chargesheet was filed.

4. The Trial Court having taken into consideration evidence on record, came to the conclusion that the prosecution has not established that the Accused demanded bribe and as such mere recovery of tainted money was not sufficient for establishing the fact that the Accused has committed an offence.

5. Learned APP for the State invited my attention to the impugned order and submitted that though PW-1 had supported to the case of the prosecution in his examination in chief, in the cross examination he had supported the case of the accused. He submitted that, however, panchanama was proved and it was established that the Accused had accepted Rs.300/- from the complainant. He submitted

that in the cross examination, PW-1 admitted that he was not in a position to state exact words which were used by the accused for demanding said amount. He further submitted that though exact words could not be stated in chief examination, he had clearly stated in his cross examination that the amount was demanded by the accused. He submitted that therefore, prima facie case is made out for granting relief.

6. In my view, submissions made by the learned APP cannot be accepted. It is a well settled position in law that the prosecution has to first establish demand of money as and by way of illegal gratification and only after this hurdle is crossed by the prosecution, then second part of acceptance has to be established. It is a well settled position that mere acceptance of money by the accused is not sufficient for establishing the offence punishable U/s.7, 13(1)(d) r/w 13(2) of PC Act. In the present case, panch witness Kulkarni has admitted in his cross examination that he could not remember the exact words used by the Accused. In my view, this admission of demand has not been proved by the prosecution. Mere acceptance of the amount is not sufficient since it is possible that the accused may have accepted the money for

number of reasons. Crucial link for the purpose of establishing offence U/s.7, 13(1)(d) r/w 13(2) of PC Act is that accused should make a demand for illegal gratification only when demand and acceptance are established, the ingredients of the said offence are said to have been proved by the prosecution.

7. In the present case, the Trial Court has also observed that the explanation given by the accused is a plausible explanation. Accused has stated in his statement that the amount of Rs.300/- was demanded by him from Tatya Shinde as told to him by Smt. Sonavane who was working in the said office. Therefore, there is no infirmity in the order passed by the Trial Court. No cause is made out for granting relief. Leave is refused. Appeal is dismissed accordingly.

V.M. KANADE, J.